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No. 87-1573

Supreme Court, U.S.
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JOSEPH F. SPANOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1987

WILLIE B. KILGORE, DORIS McCONNELL,
PATSY BURCHETT,

Cross-Petitioners,

v.

COMMONWEALTH OF VIRGINIA, *ex rel.* STATE
BOARD OF ELECTIONS, KATHERINE JONES
McCLELLAND, FAYE OWENS, ROGER ADAMS,
EVELYN BACON, PHILLIP CHEEK, the COUNTY OF
LEE, VIRGINIA, the COUNTY OF SCOTT, VIRGINIA,
the REPUBLIC INSURANCE COMPANY and the
COMPASS INSURANCE COMPANY,

Cross-Respondents.

**OPPOSITION TO CROSS-PETITION FOR A WRIT
OF CERTIORARI OF KILGORE, McCONNELL AND
BURCHETT TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT**

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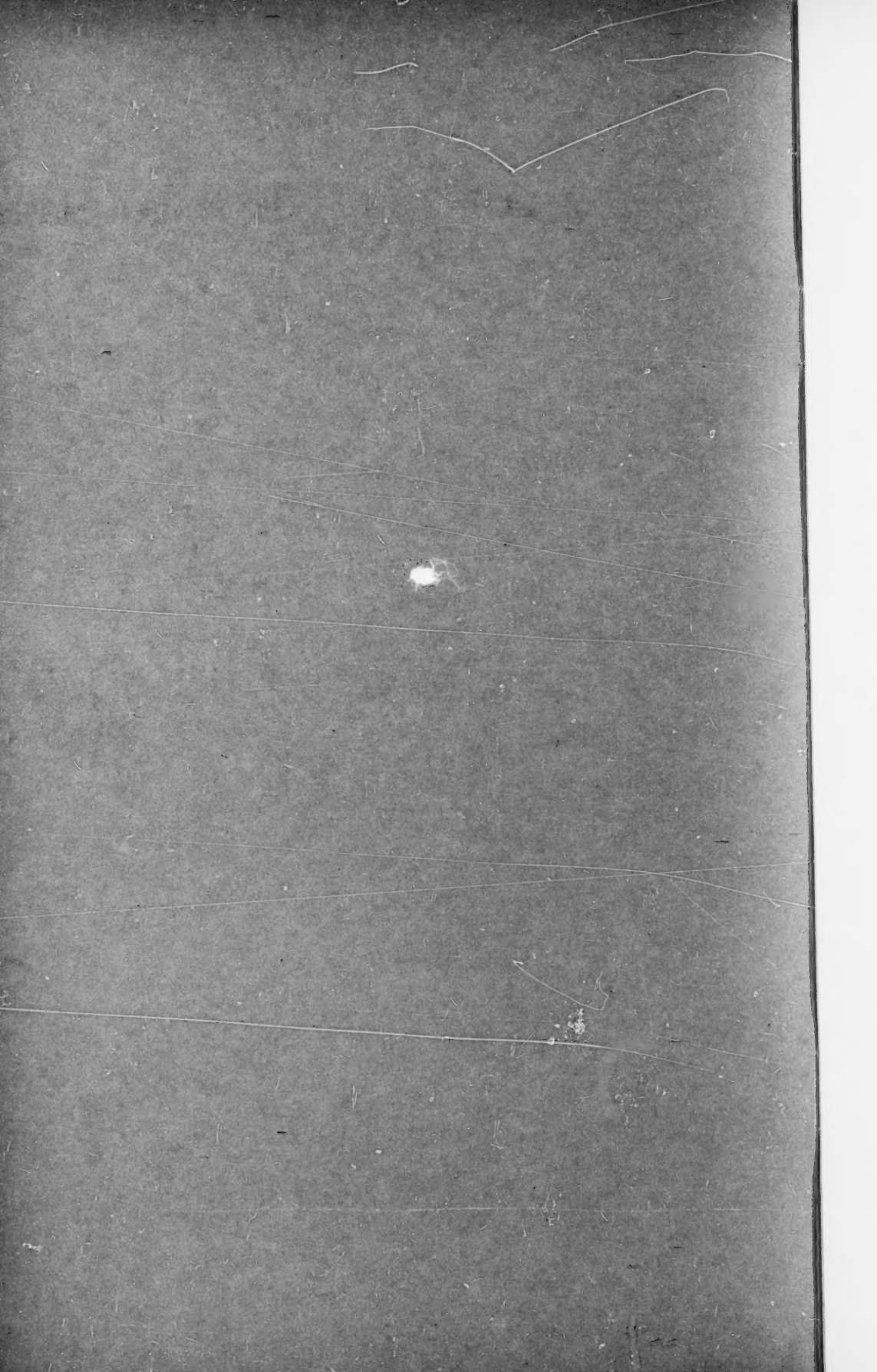
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QUESTION PRESENTED

Whether this Court should decline to review the construction of a state statute agreed upon by both lower courts, where the validity of the statute is not in question, but only its applicability to the unique facts of this case?

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COMPANY and the COMPASS INSURANCE
COMPANY,
Cross-Respondents.

**OPPOSITION TO CROSS-PETITION FOR A
WRIT OF CERTIORARI OF KILGORE,
McCONNELL AND BURCHETT TO THE
UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT**

Respondents Republic Insurance Company and
Scott County respectfully oppose the Cross-Petition to
this Court filed by Willie B. Kilgore, Doris McConnell
and Patsy Burchett for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit
for the following reasons.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent state statutes at issue here are reproduced in the Commonwealth of Virginia's Petition for a Writ of Certiorari in *Commonwealth of Virginia ex rel. State Board of Elections v. Kilgore, et al.*, No. 87-1424, filed February 17, 1988 ("Case No. 87-1424").

STATEMENT OF THE CASE

Respondents respectfully adopt and incorporate by reference the Statement of the Case in their Opposition to the Commonwealth of Virginia's Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit in Case No. 87-1424.

To the extent the Cross-Petition raises one new issue with regard to Patsy Burchett, the Assistant Registrar of Lee County, these Respondents take no position as that is a matter solely between Burchett, Lee County and the Commonwealth of Virginia.

REASONS FOR DENYING THE WRIT

THIS IS NOT THE RARE AND EXCEPTIONAL CASE IN WHICH THIS COURT SHOULD REVIEW A CONSTRUCTION OF STATE LAW AGREED UPON BY THE TWO LOWER FEDERAL COURTS, ESPECIALLY WHEN THE LOWER COURTS' INTERPRETATION OF THE STATUTE IS REASONABLE.

In Cross-Petitioners' third Question Presented, they raise the issue of whether the United States Court of Appeals correctly held that, under the circumstances presented to it, voter registrars and assistant registrars were employees of the Commonwealth of Virginia. However, it is noteworthy that Cross-Petitioners: 1) do not challenge the lower court's finding that electoral board members in the counties are employees of the Commonwealth; and 2) limit the discussion of the issue in their Brief to the assistant registrar of Lee County.¹

To the extent Cross-Petitioners challenge the ruling of the Fourth Circuit in *McConnell v. Adams*, 829 F. 2d 1319 (4th Cir. 1987), *affirming in pertinent part, Kilgore v. McClelland*, 637 F. Supp. 1241 (W.D. Va. 1985), *Burchett v. Cheek*, 637 F. Supp. 1249 (W.D. Va. 1985) and *Kilgore v. McClelland*, 637 F. Supp. 1253 (W.D. Va. 1986), Respondents incorporate herein by reference pp. 5-10 of their Brief in Opposition to the Commonwealth of Virginia's Petition for

¹Cross-Petitioner Patsy Burchett, Assistant Registrar of Lee County argues, "The [lower] court failed to address the question of whether an assistant registrar is considered a state or local employee." Cross-Petition, p. 26.

Certiorari in Case No. 87-1424. The argument therein demonstrates the correctness of the decisions of the two lower courts that under Virginia law, registrars and board members in the counties are employees of the Commonwealth of Virginia.

Since no "plain error" or an "unreasonable" interpretation of state law is argued by Cross-Petitioners with regard to the employment status of registrars or board members in the counties, review by this Court is not necessary or appropriate. See *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 499, 500 n.9 (1985).

To the extent Cross-Petitioner Patsy Burchett argues that she, as assistant registrar of Lee County, was a county employee under the Fourth Circuit's ruling, these Respondents take no position, as the issue does not pertain to them. However, it would appear that Cross-Petitioners do not challenge the test applied by the Fourth Circuit; they just do not agree with the result.

CONCLUSION

The lower courts were correct in their rulings that registrars and electoral board members in the counties were employees of the Commonwealth of Virginia.

Respectfully submitted,

REPUBLIC INSURANCE COMPANY
and
SCOTT COUNTY, VIRGINIA

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